APPEAL NO. 020645
FILED MAY 1, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was convened by the hearing officer on February 26, 2002. The hearing officer resolved the sole issue before her by determining that the appellant's (claimant) correct impairment rating (IR) is 5% pursuant to the designated doctor's amended certification. The claimant appealed, asserting that the correct IR should be 25% pursuant to the designated doctor's initial certification. There is no response from the respondent (self-insured) in the file.

DECISION

Affirmed.

No testimony was offered at the hearing. The parties stipulated that the claimant sustained a compensable injury on _____; that the claimant reached maximum medical improvement on February 2, 2000; that the claimant's treating doctor assigned a 14% IR on January 26, 2001; that the Texas Workers' Compensation Commission (Commission)-selected designated doctor assigned a 25% IR on March 24, 2001; and that on June 18, 2001, the designated doctor amended his certification of IR and gave the claimant a 5% IR. In amending his certification, the designated doctor stated that the range of motion studies done at the time of the initial certification were to be taken out of the IR because he had invalidated them; that due to an error they were inadvertently left in; and that the correct IR is 5% not 25%.

Nothing in our review of the record indicates that the hearing officer erred in determining that the designated doctor's amended certification of IR is not against the great weight of the other medical evidence and in giving the amended certification of IR presumptive weight. Before January 2, 2002, there was no Commission rule which specifically discussed a designated doctor's amendment of IR. However, the Commission has now promulgated a rule which specifically refers to amendments by designated doctors. That rule is Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)), which provides, in relevant part:

> The designated doctor shall respond to any commission requests for clarification not later than the fifth working day after the date on which the doctor receives the commission's request. The doctor's response is considered to have presumptive weight as it is part of the doctor's opinion. [Emphasis added.]

The rule does not provide any time limits, nor does it have any qualifications on it, such as "for a proper purpose." When this rule was under consideration for adoption, Texas Workers' Compensation Commission Appeal No. 980355, decided April 6, 1998, was raised by a commenter as an example of why a response to a clarification should not always be given presumptive weight. The Commission disagreed, and responded: "The

intent is to ensure that the doctor's clarification has presumptive weight,"and "[if] the designated doctor determines that the additional documentation is supportive of a change in his original recommendation, then the opinion should also carry presumptive weight. [Emphasis added.]" *See* Texas Workers' Compensation Commission Appeal No. 013042-S, decided February 4, 2002. The Commission has left no doubt about its position on this issue.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**RB**
**(ADDRESS)**
**(CITY), TEXAS (ZIP CODE)**.

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Judge